



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Wolfgang SCHULZ

Application No. 09/826,369
Filed: April 5, 2001

AWNNG FABRIC AND PROCESS FOR PRODUCING...

Examiner: A. T. Piziali
Art Unit: 1771

APPEAL BRIEF

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Attorney Docket: SCHULZ=2

07/07/2005 MBEYENE1 00000063 09826369
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Further to the Notice of Appeal filed May 3, 2005, please enter the following Brief on Appeal:

I. Real Party in Interest

The real party in interest is Schmitz-Werke GMBH + CO., Hansestrasse 87, D-48282 Emsdetten, Germany.

II. Related Appeals and Interferences

The undersigned is not aware of any related appeals or interferences.

III. Status of Claims

Claims 1, 2, 4-6 and 11-14 have been rejected and are being appealed.

Claims 7, 9, 10 and 15 were subject to a final restriction requirement.

Claims 3, 7-10 and 15 have now been cancelled without prejudice toward the continuation of prosecution thereof in one or more continuing applications.

IV. Status of Amendments

The amendment filed October 13, 2004, has been entered.

V. Summary of Claimed Subject Matter

The present invention is directed to an awning fabric and an awning made from the fabric (page 1, lines 7-8). Awning fabrics are subject to weather damage, UV damage, tearing, and accumulation of dirt. Therefore, to meet the demands placed in awning fabrics in terms of UV light-fastness, resistance to tearing, weather resistance, and water and dirt repellency, awning fabrics are conventionally produced from spin-dyed polyacrylonitrile (PAC) filaments using strong yarn with a count of Nm 34x2 (dtex) (page 1, lines 12-16). To

obtain good water repellency and sharply defined longitudinal stripes in the pattern, approximately 30 warp threads/cm and approximately 15 weft threads/cm are used in conventional awning fabrics (page 3, lines 16-18). The finished fabric is then provided with stiffening and water-repellent artificial resins (page 1, lines 18-19).

Other types of filament fabrics, having a weight per unit area of 300 g/m², were not accepted as useful for awning fabrics because of the lack of UV stability of the filaments and dyes (page 1, lines 21-24). These fabrics are also unduly heavy.

The present invention provides a fabric for awnings having the lowest weight per unit area along with good UV stability and weather resistance (page 1, lines 26-28). The present invention uses polyester continuous filament yarn and/or polyester monofilament yarn (page 2, liens 4-7). The continuous filament yarn produces a smoother surface, which is more resistant to soiling than conventional awning fabrics. The polyester yarn provides improved resistance to tearing (page 2, lines 9-11).

The awning yarn of the present invention is wet-dyed with an anthraquinone-based disperse dye. This makes it possible for dyeing to take place in an aqueous solution at the processor's location, thus permitting a significant broadening of the limited color range (page 3).

According to the preferred embodiment of the present invention, the weight per unit area that is attainable within the framework of the invention is between 200 and 250 g/cm². Based on this low weight per unit area, the awning fabric wraps around the cloth cover of the awning with a smaller thickness and permits a wider distance between seams than conventional awning fabrics. This results in a cheaper assembly of the awning cloth and an awning that can be built slimmer so that the undesirable so-called "Christmas tree effect" caused by superposed thickness of same areas wound on top of one another in prior

constructions is avoided (paragraph bridging pages 2 and 3). Further, the weight is considerably lower than that found in conventional awning fabrics (page 3, lines 3-6).

The resulting polyester yarn is wet-dyed with an anthraquinone-based disperse dye (page 3, lines 8-9). The disperse dyes that are used are nitro dyes, azo dyes and anthraquinone dyes (page 3, lines 9-10). A UV block is provided, which makes it possible to dye the polyester yarns wet with the required color fastness (page 3, lines 15-16). The UV block, which can be applied in the dye bath, can be based on triazine derivatives (page 3, lines 15-19).

The polyester yarn has a round cross-section which results in very high resistance to UV degradation. This makes it possible to use delustrants and lubricants, which normally form a nucleus for degradation of filaments by UV rays, in minute quantities in the filaments, preferably less than 0.05%. Conventionally, this amount is 1.5% for mat filaments types and 1.3-1.5% for semi-mat filament types (page 2, lines 9-16).

VI. Grounds of Rejection

A. In the Office action of November 17, 2004, claims 1-2, 6 and 11-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrari, USPN 4,052,521 in view of Speck, USPN 2,757,064; Hildreth, USPN 3,203,751; and Shown, USPN 3,390,947. The Examiner stated:

Ferrari discloses a woven awning fabric comprising substantially entirely a polyester continuous filament yarn column 5, lines 40-43 and column 4, lines 40-59). Ferrari discloses that the fabric may be later coated on one side with a coating material of polyvinyl chloride (column 4, lines 40-59). But the other side is not to be coated and therefore would be visible. Speck (entire document including column 1, lines 15-18 and lines 49-59), Hildreth (column 1, lines 15-18 , lines 16-10 and column 2, lines 3-16) and Shown (column 1, lines 14-26 , column 3, line 73 through column 4, line 51) each

disclose a process of wet-dyeing polyester with an anthraquinone-based dye.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to wet-dye the polyester fabric of Ferrari with any of the processes disclosed by Speck, Hildreth, or Show, because the dye would provide the awning fabric with a desired color having good fastness properties.

Regarding claim 2, Ferrari discloses that the fabric may have a weight per unit area of about 70 to about 350 g/sqm (column 4, lines 40-59).

Regarding claim 6, Ferrari does not mention the shape of the yarn, but considering that yarns conventionally have round cross sections and considering that Ferrari fails to teach or suggest an unconventional yarn shape, it appears that the yarn of Ferrari possess a round cross section.

Regarding claims 11-12, any awning may be used as a sun room awning, therefore, the awning disclosed by Ferrari may be a sun room awning.

B. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrari in view of Speck, Hildreth, or Shown as applied to claims 10-2, 6 and 11-12, above, and further in view of JP Publication No. 06-192972 to Uchida.

The Examiner stated:

Ferrari does not mention the use of a UV block, but Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyes polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a triazine-derivative based UV block to the awning fabric of Ferrari, as taught by Uchida, because the UV block would improve the light fastness of the dyed polymer.

C. Claim 6 is rejected under 35 U.S.C. 102(a) as being unpatentable over Ferrari in view of Speck, Hildreth, or Shown in view of Uchida as applied to claims 4-5 above, and further in view of Lee, USPN 5,103,874.

The Examiner stated:

Ferrari does not mention the shape of the yarn, but Lee discloses that yarns conventionally have round cross section (column 1, lines 56-64). It would have been obvious to one having

ordinary skill in the art at the time the invention was made to make the yarns of Ferrari round, as taught by Lee, because round polyester yarns are conventionally used and provide structural support and stability.

Ferrari does not mention any delustrants or lubricant, therefore, it appears that the awning fabric contains an amount of zero delustrants and lubricants.

With respect to the claimed warp rate and weft density, it would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the weaving properties of the fabric because it is understood by one of ordinary skill in the art that the warp rate and weft density determine the desired properties of the awning, such as ell, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

D. Claim 12 is rejected under 35 U.S.C 103(a) as being unpatentable over Ferrari in view of Speck, Hildreth, and Shown as applied to claims 1-2 6, and 11-12, above, and further in view of Curtis. The Examiner stated:

Ferrari does not mention articulated arm, but Curtis discloses that it is known in the art to construct an awning with articulated arms. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide articulated arms to the awning of Ferrari, because such a modification would have been motivated by the desire to improve the functionality of the awning.

E. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrari in view of Speck, Hildreth, Shown, Lee as applied to claim 13 above, and further in view of Uchida. The Examiner stated:

Ferrari does not mention the use of a UV block, but Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve light fastness of the dyed polyester (see the entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a UV block to the awning fabric of Ferrari, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester.

F. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrari in view of Speck, Hildreth, or Shown as applied to claims 1, 2, 6 and 11-12 above, and further in view of Lee in view of Delker, USPN 5,652,057.

The Examiner states:

Ferrari does not mention the shape of the yarn, but Lee discloses that yarns conventionally have round cross sections. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarns of Ferrari round, as taught by Lee, because round polyester yarns are conventionally used and provide structural support and stability.

Ferrari does not mention any delustrants or lubricants, but Delker discloses that delustrants and lubricants may be added to polyester in an amount of no greater than 0.05% (see entire document including column 9, lines 35-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include these additives in the polyester of Ferrari, motivated by the desire to improve the properties of the polyester fabric.

With regard to the claimed warp and weft density, it would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the weaving properties of the fabric because it is understood by one of ordinary skill in the art that the warp rate and weft density determine the desired properties of the awning, such as feel, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

G. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrari in view of Speck, Hildreth, or Shown as applied to claims 1, 2, 6, 11 and 12 above, and further in view of Lee in view of Delker.

The Examiner stated:

Ferrari does not mention the shape of the yarn, but Lee discloses that yarns conventionally have round cross sections. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the yarns of Ferrari round, as taught by Lee, because round polyester yarns are conventionally used and provide structural support and stability.

Ferrari does not mention any delustrants or lubricants, but Delker discloses that delustrants and lubricants may be added to

Polyester in an amount of no greater than 0.05%. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include these additives in the polyester of Ferrari, motivated by the desire to improve the properties of the polyester fabric.

With respect to the claimed warp rate and weft density, it would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the weaving properties of the fabric because it is understood by one of ordinary skill in the art that the warp rate and weft density determine the desired properties of the awning, such as feel, and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

H. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrari in view of Speck, Hildreth, and Shown in view of Lee in view of Delker as applied to claim 13 above, and further in view of Uchida.

The Examiner states:

Ferrari does not mention the use of a UV block, but Uchida discloses that a triazine-derivative based UV block may be applied to dyed polyester to improve the light fastness of the dyed polyester (see entire document). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a UV block to the awning fabric of Ferrari, as taught by Uchida, because the UV block would improve the light fastness of the dyed polyester.

VII. Argument

A. **Claims 1, 2, 6, 11 and 12 Define Non-Obvious Subject Matter over Ferrari in view of Speck, Hildreth or Shown under 35 U.S.C. 103(a).**

As the Federal Circuit noted in *In re Dembicza*k, “Our case law makes clear that the best defense against the subtle but powerful attraction of hindsight-based obviousness analysis is rigorous application of the requirement for the showing of the teaching or motivation to combine prior art references.” 175 F.3d 994, 999, 50 U.S.P.Q.2d 1615, 1617 (Fed. Cir. 1999). “To establish a *prima facie* case of obviousness based on a combination of

the content of various references, there must be some teaching, suggestion, or motivation in the prior art to make the specific combination that was made by applicant." *In re Dance*, 160 F.3d 1339, 1343, 48 U.S.P.Q.2d 1635, 1637 (Fed. Cir. 1998).

The Examiner has provided no motivation for combining the cited references. Ferrari discloses a 3-dimensionally tensioned fabric which is coated on one side. The fabrics used can be made of synthetic filaments, preferably high strength polyamide or polyester (column 4, lines 40-48). The aim of the method of Ferrari is to produce a non-shrinking, substantially smooth resulting product while using less coating material than has been conventionally used (column 1, lines 9-14).

Hildreth discloses dyeing polyester fibers with diamino-anthraquinone-carbonitrile dyestuffs. The fabrics are dyed by the Pad/Thermofix process in which the fabric is passed through an aqueous suspension of the dyestuff and the fabric is squeezed between closely-set rollers in to remove excess dye liquor. The dyestuff is then fixed onto the fabric by subjecting the material to a short, intensive heat-treatment at temperature of about 120-220⁰C (column 1, lines 26-44).

Speck discloses polyester fibers dyed with anthraquinone dyes; the dyes are applied by a printing process (column 1, lines 70-71) or by boiling a solution of the dye and the fibers (Example 1) or using super atmospheric pressure at high temperatures, such as 120⁰C (Example 2).

Shown discloses dyeing polyester textile material by immersing the textile material in a dye bath (column 3, line 73-column 4, line 2).

The cited patents teach that a polyester fabric can be coated (Ferrari), and that polyester fibers can be dyed (Hildreth, Speck and Shown).

There is nothing in any of the cited patents that discloses or suggests a fabric made of substantially entirely wet-dyed polyester continuous filament yarn and /or polyester monofilament yarn. Ferrari discloses coating the fabric on one side, presumably to produce a non-shrinking, substantially smooth product (column 1, lines 9-14). Ferrari coats the polyester fabric to produce a smooth product. The fabric of the present invention, however, does not need a coating to produce a smooth fabric, because the use of continuous filament yarn and/or monofilament yarn produces a smooth fabric. There is no motivation to combine the coated fabric disclosed by Ferrari with the dyed polyesters disclosed by Hildreth, Speck and Shown, as the result would be a polyester fabric dyed with an anthraquinone dye which is then coated with a synthetic coating material applied to one side of the fabric. Prior to introducing the fabric into a curing oven, the longitudinal edges of the fabric are introduced into a tenter which accompanies the fabric until the termination of a calendaring operation. While the fabric is stretched in the longitudinal and transverse directions, it is subjected to at least one second similar coating operation on the same side, while the first coat is still hot. Although Ferrari discloses coating only one side of the fabric, there is no indication that the fibers used in the Ferrari fabric are dyed.

The Examiner has provided no motivation to combine Ferrari with Hildreth, Speck and Shown, and it is clear from the above that such a combination would not result in the fabric of the present invention.

Applicant respectfully notes that it is not the selection of one feature that provides the improved results of the present invention, but instead the combination of various factors. The selection of polyester, together with the nature of the yarn (continuous filament or monofilament), together with the yarn having been wet-dyed with an anthraquinone-based disperse dye, as called for in claim 1, provide an exceptional product.

The new product according to the present invention has astonishing new properties and advantages as follows:

1. The wet-dyeing of the awning fabric is completely independent from the production of the filaments so that it is possible to obtain colors as desired by the Appellant for the awnings independent of the color range of the producer of the filaments. An independent color range is not available using the prior art.
2. The surface of the fabric is silk-like smooth. Therefore, a very neat appearance is obtained as compared with prior art awnings, and the smooth surface prevents the pollution of the awning. This awning fabric needs no coating to be smooth.
3. The elasticity of the fabric is higher than previously known, and therefore cuttings formed at the occasion of winding up the awning are avoided.
4. Tear resistance is twice as high as with conventional awnings.
5. There is a certain transparency of visual light, which leads to a friendly atmosphere, while UV light is kept out.

Claim 2 depends from claim 1. While Ferrari discloses that the fabric may have a weight per unit area of about 70 to 350 grams/sqm, however, the coating adds about 150 to about 1000 grams/sqm to the weight of the fabric itself, so that the weight of the coated fabric will be in the range of 220-1350 grams/sqm. (see col. 4, lines 47-48 and 55-59). Since the fabric of the present invention weighs only 200-250 grams/sqm, there is relatively little overlap between the weight of the fabric of the present invention and the weight of the coated fabric of Ferrari. The Ferrari fabric, unlike the fabric of the present invention, requires a coating to render the fabric smooth. This coating increases the weight of the fabric considerably. The weight of the fabric of the present invention, which is

smooth, should be compared with the weight of the smooth Ferrari fabric, which has been coated. The weight of the Ferrari fabric is then 220 to 1350 grams per square meter, whereas the weight of the fabric of the present invention is 200 to 250 grams per square meter.

Claim 6 depends from claim 1, and recites that the yarn is round. However, there is nothing in the cited references that would lead one to believe that the Ferrari yarn is round, particularly since Ferrari must coat the fabric in order to produce a smooth surface. The combined features of the present invention work together to produce an awning fabric that is relatively light, smooth, tear-resistant, and UV-protected. There has been nothing cited that suggests that all of these features be combined to produce a superior awning fabric.

Claims 11 and 12 depend from claim 1, claiming an awning made of the fabric of claim 1. Although the Examiner notes that any awning fabric may be used as a sun room awning, the cited references would not lead one skilled in the art to the present invention.

The Examiner has not met his burden of showing that the combination of cited references renders claims 1, 2, 6 and 11-12 obvious. Appellant respectfully requests reversal of the Examiner's decision and withdrawal of the rejection of claims 1, 2, 6, 11 and 12.

B. Claims 4 and 5 Define Non-Obvious Subject Matter over Ferrari in view of Speck, Hildreth or Shown as applied to claims 1, 2, 6 and 11-12, and further in view of Uchida under 35 U.S.C. 103(a).

Claim 4 depends from claim 1, and recites that a UV block is provided. Claim 5 depends from claim 4, and recites that the UV block is triazine-derivative based. Because claims 4 and 5 depend from and incorporate the subject matter of claim 1, claims 4 and 5 clearly define over Ferrari in view of Hildreth, Shown or Speck in view of Uchida.

Uchida merely discloses adding an ultraviolet ray absorber to a dye bath or printing paste containing a disperse dye and treating polyester fiber therewith. However, Uchida does not add anything to the combination of Ferrari with Speck, Hildreth, or Shown,

because Uchida does not disclose or suggest a combination of Ferrari with Speck, Hildreth, or Shown.

C. Claim 6 Defines Non-Obvious Subject Matter over Ferrari in view of Speck, Hildreth or Shown in view of Uchida as applied to claims 4 and 5, and further in view of Lee under 35 U.S.C. 103(a).

The Examiner concedes that Ferrari does not mention the shape of the yarn, but Lee is said to disclose that yarns conventionally have round cross sections. However, Lee's disclosure of conventionally round fibers is with respect to papermakers fabrics, and flat yarns are also disclosed as being used for papermakers fabrics (column 1, lines 20-22).

The present invention requires the use of continuous filament yarn rather than the staple filament yarn, to produce a very smooth surface. There is nothing in Lee that would lead one skilled in the art to prepare awning fabric from staple filament yarns, as Lee only relates to papermaking fabrics, and notes that yarns may be round or flat. There is no suggestion in Lee to make an awning fabric from staple filament polyester yarn which is woven to be smooth and not require a coating.

D. Claim 12 Defines Non-Obvious Subject Matter over Ferrari in view of Speck, Hildreth or Shown in view of Curtis under 35 U.S.C. 103(a).

While Curtis discloses awning having articulated arms, there is nothing in Curtis that discloses or suggests the particular fabric of which the awning of the present invention is constructed. Curtis adds nothing to Ferrari to motivate one skilled in the art to use the particular fabric claimed herein for an awning or any other structure.

E. Claim 13 Defines Non-Obvious Subject Matter over Ferrari in view of Speck, Hildreth or Shown as applied to claims 1, 2, 6, 11 and 12 above, and further in view of Lee under 35 U.S.C. 103(a).

Claim 13 claims an awning fabric made of polyester filament yarn dyed with a disperse dye and having a round cross section and contain an amount no greater than 0.05%

of delustrants and lubricants. The fabric of the present invention has a smooth surface, and the round filament polyester yarns provides a high resistance to UV rays. The delustrants and lubricants, which normally form a nucleus for degradation of filaments by UV rays, are used in minute quantities in the filaments, rather than the conventional 0.3-0.5% for semi-mat filament types.

As noted above, Lee relates to papermaking fabrics, not to awnings, and the properties required would be quite different for the two types of fabrics. The preferred warp rate and weft density are all part of the herein claimed fabric, along with the shape of the filaments, the weight of the fabric, and the types of additives. There is nothing in the cited references that would lead one skilled in the art to produce a fabric as claimed herein.

F. Claim 14 Defines Non-Obvious Subject Matter over Ferrari in view of Speck, Hildreth or Shown in view of Lee as applied to claim 13 above, and further in view of Uchida under 35 U.S.C. 103(a).

The fact that Uchida discloses use of a triazine-derivative based UV block to improve light fastness of the dyed polyester does not make claim 14 obvious. Ferrari coats the fabric with a coating of, for example, PVC. The coating makes it unnecessary to provide a UV block in the polyester fabric. Thus, there is no motivation for the fabric of Ferrari to include a UV black of any sort whatsoever.

G. Claim 13 Defines Non-Obvious Subject Matter over Ferrari in view of Speck, Hildreth or Shown as Applied to Claims 1, 2, 6, 11 and 12 above, and further in view of Lee in view of Delker under 35 U.S.C. 103(a).

While Lee discloses that yarns conventionally have round cross-sections, Lee also discloses that yarns conventionally have flat cross sections. Lee gives no reason to choose one cross section over another. However, the present inventors have found that producing a fabric with round cross section and all of the other parameters of the herein

claimed fabric produces a fabric which is smooth, tear-resistant, etc. The warp rate and weft density combine with the yarn shape to produce a fabric having the desired properties as claimed herein.

With respect to delustering and lubricants, it is respectfully submitted that there is no motivation to add these to the Ferrari fabric, as the Ferrari fabric is coated on one side, which obviates the need for delustering and lubricating the yarns.

Moreover, it is respectfully submitted that Delker is not relevant to the present invention. Delker discloses high strength cores-sheath monofilaments comprising a core of a thermoplastic polyester and a sheath of a different thermoplastic polyester. There is nothing in Delker which relates to the features of Appellant's fabric, nor is there any teaching that would lead one to the features of Appellant's fabric which no prior art shows, namely, the claimed warp rate and weft density, or the weight of the fabric.

The Appellant, who is an expert in this art, believes that no awning fabric having the features of claim 13 has ever been produced. These features are certainly not disclosed in the references cited. Appellant respectfully notes that conventional awning fabrics usually have a weft density of 30 warp threads/cm and 15 weft threads/cm, which results in a weight unit area of 330 g/m² or greater. Applicant's awning fabric as recited in claim 13 as shown in the number of threads than is conventional, and still weighs less (as does the fabric of claim 2), *i.e.*, the awning fabric of claim 13 is very dense, but flatter and lighter than what is conventional for awning fabrics.

Appellants respectfully note that the burden is initially on the Examiner to establish a *prima facie* case of obviousness. It is respectfully submitted that it is not sufficient for an examiner to simply state that "it would have been an obvious modification to

alter the yarns of Ferrari” when there is no support for such a conclusion. Appellant respectfully relies on *Ex parte Levengood*, 28 USPQ 1300, 1301-1302 (BPAI 1993):

In order to establish a *prima facie* case of obviousness, it is necessary for the Examiner to present **evidence**, preferably in the form of some teaching suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the art **would have been led... to** arrive at the claimed invention. [Citations omitted; italics in original].

H. Claim 14 Defines Non-Obvious Subject Matter over Ferrari in view of Speck, Hildreth or Shown in view of Lee in view of Delker as applied to claim 13 above, and further in view of Uchida under 35 U.S.C. 103(a).

As noted above, Ferrari does not mention a UV block because the Ferrari fabric is coated and does not need a UV block to protect the polyester. Thus, there is no motivation to combine Ferrari with Uchida, as there is no need to provide a UV block to the Ferrari fabric.

Appellant repeats that to the best of his knowledge an awning fabric with the features of claim 13 has never been produced. Its features may have been desirable, but no one in the awning art or the awning fabric art knew how to produce such a fabric. However, by using disperse dyes according to the invention, it is possible to produce a fabric with polyester filaments, thus providing a very dense but flatter and lighter fabric compared to fabrics that have been common for conventional awnings. Conventional awning fabrics, which have been produced for many, many years, usually have a weft density of 30 warp threads/cm and 15 weft threads/cm, resulting in a weight per unit area of at least 300 g/m².

Appellant’s invention provides a number of advantages which have been described above, the prior art does not make Appellant’s invention obvious. The Examiner

has again not met his burden, and reversal of the Examiner and withdrawal of these rejections are therefore respectfully urged.

CONCLUSION

The proposed combinations would not have been obvious to the person of ordinary skill in the art at the time the present invention was made because the references, even if properly combined, would not reach the claimed subject matter.

The claims as submitted are believed to truly set for the inventive concept of the present invention and to define over the prior art. The Examiner has not met his burden. Accordingly, reversal of the Examiner and allowance of claims 1-2, 4-6 and 11-14 are earnestly solicited.

Respectfully submitted,

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APPENDIX A - Claims Under Appeal

1. A woven awning fabric, comprising substantially entirely wet-dyed polyester continuous filament yarn and/or polyester monofilament yarn, wherein said wet-dyed yarn is dyed with an anthraquinone-based disperse dye.
2. An awning fabric according to claim 1, wherein it has a weight per unit area of 200 to 250 g/sqm.
4. An awning fabric according to claim 1, wherein a UV block is provided.
5. An awning fabric according to claim 4, wherein the UV block is triazine-derivative based.
6. An awning fabric according to claim 5, wherein the polyester yarn is round.
11. An awning comprising an awning fabric according to claim 1.
12. The awning of claim 11 which is a sun room awning or an awning with articulated arms.
13. An awning fabric woven of polyester filament yarn dyed with a disperse dye and having a round cross section and containing an amount no greater than 0.05% of delustrants and lubricants,

said polyester filament yarn being a continuous filament yarn and/or a monofilament yarn, said fabric having a weft density of 35-50 filaments per cm, a warp rate of 20-25 filament per cm and a weight of 200-250 g/sqm.

14. The awning fabric according to claim 13 wherein said disperse dye comprises a nitro dye, an azo dye or anthraquinone dye, and contains a triazine based UV block.



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Wolfgang SCHULZ

Application No.: 09/826,369

Filed: April 5, 2001

For: AWNING FABRIC AND PROCESS FOR PRODUCING...

THE COMMISSIONER OF PATENTS
U.S. Patent and Trademark Office
Randolph Building, Mail Stop Appeal Brief-Patents
401 Dulany Street
Alexandria, VA 22314

Sir:

Transmitted herewith is a [XX] Brief on Appeal in the above-identified application.

[XX] Small Entity Status: Applicant(s) claim small entity status. See 37 C.F.R. §1.27.

[XX] Brief on Appeal fee \$250.00

[] The fee has been calculated as shown below:

	(Col. 1)	(Col. 2)	(Col. 3)
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR
TOTAL	*	MINUS ** 20	PRESENT EXTRA EQUALS 0
INDEP. *			
MINUS *** 3			
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM			

ADDITIONAL FEE TOTAL

SMALL ENTITY		OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE	RATE	ADDITIONAL FEE
x 25	\$	x 50	\$
x 100	\$	x 200	\$
+ 180	\$	+ 360	\$
ADDITIONAL FEE TOTAL		TOTAL	

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.

*** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

[XX] Conditional Petition for Extension of Time

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

[] It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity

Response Filed Within

- [] First - \$ 60.00
- [] Second - \$ 225.00
- [] Third - \$ 510.00
- [] Fourth - \$ 795.00

Month After Time Period Set

[] Less fees (\$_____) already paid for ____ month(s) extension of time on _____.

Other Than Small Entity

Response Filed Within

- [] First - \$ 120.00
- [] Second - \$ 450.00
- [] Third - \$ 1020.00
- [] Fourth - \$ 1590.00

Month After Time Period Set

[] Please charge my Deposit Account No. 02-4035 in the amount of \$_____.

[XX] Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$250.00

[] A check in the amount of \$_____ is attached (check no.).

[XX] The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

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